

EXHIBIT 9

HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

GOOGLE LLC,

Plaintiff,

v.

SONOS, INC.,

Defendant.

Case No. 3:20-cv-06754-WHA
Related to Case No. 3:21-cv-07559-WHA

**REBUTTAL EXPERT REPORT
REGARDING DAMAGES**

January 13, 2023

Respectfully Submitted,



W. Christopher Bakewell

following subsection.

340. As I also discussed in **Section 4**, developed apps are different than bare patent rights. Even if the IFTTT app is comparable to the ‘885 and ‘966 patents, those two patents only relate to a subset of the overall functionality of IFTTT. In his analysis of the ‘033 patent, Mr. Malackowski illustrated this—his “market approach” relies upon apps that he conceded involve prior art and software, and are not worthy of being considered a “primary” theory. (For the ‘885 and ‘966 patents, Mr. Malackowski relied upon the IFTTT app, but called it an income approach.) At no point did Mr. Malackowski adjust for the fact that the IFTTT app includes software beyond patent rights, and at no point did he consider prior art that should be apportioned out.⁵⁹⁰
341. I understand from Dr. Schonfeld the IFTTT app is not comparable to the ‘885 patent.⁵⁹¹ Even assuming the IFTTT app is a proxy, an issue in Mr. Malackowski’s royalty theory is that he did not isolate demand or value related to grouping of speakers (much less “zone scene”) relative to the hundreds of other functionalities in the IFTTT app.⁵⁹²
342. Mr. Malackowski also did not discuss or adjust for differences in target consumer for IFTTT and Google products. As I explained above, Google users are attracted to the accused products due to considerations such as Google Assistant voice control, the ability to set timers and make shopping lists, compatibility with other devices, and intuitive user interface of its Google Home app.⁵⁹³ IFTTT users could be attracted to the multitude of relatively specific actions that are enabled by its applets.⁵⁹⁴ Mr. Malackowski also did not show that Google or Sonos customers

⁵⁹⁰ Interview of Dr. Schonfeld.

⁵⁹¹ Interview of Dr. Schonfeld.

⁵⁹² IFTTT website (accessed: <https://ifttt.com/>; <https://ifttt.com/explore>; <https://ifttt.com/explore/applets>; <https://ifttt.com/explore/services>).

⁵⁹³ Interview of Mr. Chan; SONOS-SVG2-00053537-574 at 545; SONOS-SVG2-00055769 at 806; “Sonos One Review: The Best Smart Speaker For Audiophiles,” The Guardian, February 15, 2018 (accessed: www.theguardian.com/technology/2018/feb/15/sonos-one-review-best-smart-speaker-audiophiles-amazon-alexa); “How Smart-Speaker Maker Sonos Plans to Take on Apple, Google and Amazon,” Variety.com, June 20, 2018 (accessed: https://variety.com/2018/biz/features/sonos-apple-google-amazon-1202850159/?sub_action=logged_in); “Sonos CEO On Tech Competition: We’re The Story Of Software Eating Audio,” Yahoo Finance, March 10, 2021 (<https://www.yahoo.com/video/sonos-ceo-tech-competition-story-175816392.html>); Deposition of Chris Chan, November 29, 2022, pp. 102-103, 112-113.

⁵⁹⁴ “IFTTT Applets,” IFTTT website (accessed: <https://ifttt.com/explore/applets>).